Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

WRIT PETITION NO. 3814 OF 2004

BETWEEN

Devendra Kumar Sharma S/o Late Shri Ishwari Prasad Sharma, aged about 48 years, occupation senior security guard, Central Store Office, S.E.C.L. Korba, Resident of Pump House, Korba (CG).

PETITIONER

A N D

1. South Eastern Coalfield Limited, through its Director (Personnel), S.E.C.L. Bilaspur, Tehsil and District Bilaspur (CG).

2. Chief Security Officer, S.E.C.L., Head Quarter Bilaspur, Tehsil and District Bilaspur (CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

AFR

HIGH COURT JUDICATURE AT BILASPUR (C.G)

WRIT PETITION NO.3814 OF 2004

Devendra Kumar Sharma

Vs.

South Eastern Coal Fields Ltd., and another

Smt. Indira Tripathi, Counsel for the petitioner.
Shri P.S. Koshy, Counsel for the respondents.

ORDER
(11.01.2005)

With the consent of the parties, heard finally.

(2) By this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the validity of order dated 31.5.2004 (Annexure P-3) by which he has been transferred from SECL Establishment at Korba to Jamna Kotma. He has also challenged the validity of order dated 27.9.2004 (Annexure P-5) which is an order passed on representation dated 09.09.2004. Admittedly, the petitioner is working on the Post of Chief Security Guard. His name appears at Serial No.4 in the impugned order dated 31.5.2004.

(3) The facts of the case are that the petitioner was transferred vide order dated 31.5.2004 (Annexure P-3) from S.E.C.L. Korba to S.E.C.L. Jamna Kotma. After receiving the said order, the petitioner challenged its validity by filing a writ petition vide W.P.No.2416/2004. The said petition came up for

hearing before this Court on 20.8.2004 and the same was disposed of with a direction that the petitioner shall make a detailed representation before the competent authority and the competent authority shall consider and decide the same on its own merits in accordance with law preferably within six weeks from the date of receipt/production of representation. It was also directed that if any contravention of policy or guidelines is brought to the notice, the same be considered on its own merits.

(4) It appears that after passing of the said order, the petitioner filed a representation on 09.9.2004. The said representation was considered by the competent authority and the impugned order dated 27.9.2004 (Annexure P-5) has been passed. Since the competent authority rejected the aforesaid representation of the petitioner, now the petitioner has come up before this Court in the second round.

(5) Learned counsel for the petitioner submits that even before passing of the order of transfer, the petitioner had given an application that he is getting some treatment in Gevra and his son aged about 12 years is also under treatment of Arthritis, therefore, he should be transferred in Gevra area. She further submits that even after this application of pre-transfer date, the authorities did not transfer him to Gevra and he has been transferred to Jamna Kotma. She also submits that according to the impugned order (Annexure P-3) many persons have been transferred to Gevra from different places in which the petitioner could have been easily adjusted. It is

important to mention about this fact here that the copy of representation dated 09.09.2004, referred to in the order (Annexure P-5) has not been filed on record. Therefore, this Court is unable to find out as to what grounds were raised by the petitioner before the competent authority.

(6) After bare perusal of the order (Annexure P-5) it appears that the competent authority has examined the representation of the petitioner in light of the instructions of Central Vigilance Commission, Government of India. It is held by the authority that under the aforesaid instructions of Central Vigilance Department only, 134 security personnel have been transferred to different places and the transfer is not in infringement of any policy framed by the South Eastern Coalfields Limited.

(7) Counsel for the petitioner also could not point out as to how the transfer is bad in law and which of the policy was infringed by the department while transferring the petitioner. The law in relation to consideration of orders of transfer is now well settled. The apex Court while dealing with the matter of ***Kendriya Vidya Sanghatan –Vs- Damodar Prasad Pandey*** reported in ***2004 AIR SCW Pg.5563*** referring to the various decisions has observed vide para 4 as follows:

> "Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer *(See Ambani Kanta Ray –Vs- State of Orissa, 1995 (Suppl) 4 SCC 169).* Unless the order of transfer is vitiated by mala fide or is made in violation of operative guidelines, the Court cannot interfere with it. *(See Union of India v. S.L. Abbas, AIR 1993 SC 2444.* Who should be transferred and posted where is a

matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it. In *Union of India & others –Vs- Janardan Debanath & anr. (2004)4 SCC 245* it was observed as follows:

> "No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan, (2001) 8 SCC 574".

(8) In light of above observations and the principles enumerated in various judicial pronouncements of the Apex Court, now it is clear that the transfer which is an incidence of service can only be interfered with when the same is shown to be arbitrary or malafide or passed in infraction of any prescribed norms of principles governing the transfers. If the guidelines are properly followed and the transfer is neither malafide nor arbitrary and it does not infringe any right of the employee, the same cannot be interfered by the Courts in routine. The case would have been differently governed when

the employee claims that he was working on a non-transferable post and the transfer was not an incidence of his service.

(9) Applying the aforesaid principles in the present case, it seems that the petitioner has challenged the transfer on his personal grounds only. No ground of mala fides or arbitraryness or violation of norms of transfer have been raised. The order of transfer is also a general transfer order. Such orders cannot be set aside or interfered with by the Courts on personal grounds. In the opinion of this Court, the authority has rightly rejected the representation of the petitioner by testing its competency on the touch stone of the guidelines and instructions and no interference is required in the same. A person working in the security section which in fact is other than a civil post carries more responsibility than working in the general civil services. Their postings are made in accordance with the security oriented necessity of the department. Their cases cannot be viewed by general eye. In the opinion of this Court, even rejection of the representation cannot be said to be illegal or arbitrary. The petition has no merit and is dismissed.

Consequently, M.W.P.No.4224/2004 stands disposed of.

Sd/-
Sunil Kumar Sinha
Judge